

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7334

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HERIBERTO MOLINA-OSUNA,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Salisbury. William L. Osteen, District Judge. (CR-96-255-4-2, CA-00-275-1)

Submitted: May 3, 2001

Decided: May 29, 2001

Before NIEMEYER, LUTTIG, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Heriberto Molina-Osuna, Appellant Pro Se. Clifton Thomas Barrett, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Heriberto Molina-Osuna seeks to appeal the district court's order dismissing his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). Molina-Osuna's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Molina-Osuna that failure to timely file and serve objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Molina-Osuna failed to properly serve on the Defendant his objections to the magistrate judge's recommendation.

The timely filing and service of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to do so will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Molina-Osuna has waived appellate review by failing to properly file and serve objections after receiving proper notice. We accordingly deny a certificate of appealability and dismiss the appeal.* We dispense with oral

* On appeal, Molina-Osuna raises a claim under Apprendi v. New Jersey, 530 U.S. 466 (2000). We recently held in United States v. Sanders, ___ F.3d ___, 2001 WL 369719 (4th Cir. Apr. 13, 2001) (No. 00-6281), that the new rule announced in Apprendi is not retroactively applicable to cases on collateral review. Accordingly, Molina-Osuna's Apprendi claim is not cognizable.

argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED